IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 1 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAYALBHAI AMRABHAI

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

MR BY MANKAD, APP for Respondent No. 1

Respondent No. 2 served

CORAM : MR.JUSTICE J.R.VORA

Date of decision: /10/2001

C.A.V. JUDGEMENT

1. This Revision Application is preferred by the original accused of Criminal Case No. 49 of 1980 of the Court of Judicial Magistrate, First Class, Ghogha, being

aggrieved and dissatisfied by an order of the learned Additional Sessions Judge, Bhavnagar, in Criminal Appeal No. 28 of 1988, by which the learned Addl. Sessions Judge, Bhavnagar, vide his Order dated 21st November, 1992, confirmed the conviction of the present petitioner in the above said Criminal Case No.49/80 for the charges proved under Section 326 read with Section 34 of the Indian Penal Code.

2. The incident has taken place on 7th March, 1980 at about 1.00 to 1.30 p.m. and the complaint of which filed by one Bachubhai Bhikhabhai before Bhavnagar `A' Division Police Station and which was transferred to Ghogha Police Station. As per the complaint of Bachubhai Bhikhabhai, which is at Exh. 36, while he was proceeding to his agricultural land from Village Kuda and when he reached near the field of accused No.1 the present petitioner, present petitioner Dayalbhai Amrabhai original accused No.2, Amrabhai Raghavbhai Koli, accused No.1 and Bai Kalu, wife of accused No.1 Amra Raghav, original accused No.2 were present near the filed. The original accused No.1 and accused No.3 were standing on the road and on seeing the complainant, original accused No.3 Kaluben took the complainant in her grips. While the complainant attempted to got free himself from the grips of the accused No.3, at that time, the present petitioner - original accused No.2 ran after the complainant and over took him and inflicted two dharia blows which resulted into serious injuries on the right hand, due to which, the right hand of the complainant near palm was detached. The injuries were also there on the ear of the complainant and on the legs. The original accused No.1 father of the present petitioner also reached near the place of offence and gave an axe blow to the complainant on different parts of the body. The complainant has further stated in the complaint that he was accompanied by one Vasta Parsottam. While the incident occurred and the present petitioner threatened Vasta Parsottam that he will also be beaten and therefore Vasta Parsottam ran away. Vasta Parsottam in turn informed the family of the complainant and thereafter the son and wife of the complainant went to the place of offence and removed the complainant in a bullock cart to Koliyak Dispensary. From there for further treatment the complaint then was removed to the Government Hospital at Bhavnagar where his complaint was recorded at about 7.00 p.m. by Bhavnagar `A' Division Police Station and was transferred to Ghogha Police Station for investigation and in pursuance of this investigation a charge sheet against all the three accused in the Court of Judicial Magistrate, First class, Ghogha, came to be filed which

was registered as Criminal Case No. 49 of 1980 for the offences punishable under Sections 326 read with 34 of the Indian Penal Code. After full fledged trial, the learned JMFC came to the conclusion that the evidence of the complainant was amply corroborated by the evidence of the Medical evidence and found all the three accused guilty of offences punishable under Sections 326 read with 34 of the Indian Penal Code. Learned JMFC vide his final judgment and order which is dated 25th of April, 1998 came to the conclusion that the original accused Nos.1 and 3 were entitled to benefit of the provisions of Probation of Offenders Act and they were called upon to execute a bond of Rs.2,500/- for the period of two years. While the learned Magistrate found that the present petitioner - original accused No. 2 was not entitled to the benefit of the provision of Probation of Offenders Act because he inflicted very serious injuries to the complainant and, therefore, he was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 2,500/-, in default to suffer simple imprisonment for nine months. The learned Magistrate also directed to pay Rs. 2,500/- as compensation to Bachubhai Bhikhabhai the complainant of the case.

3. Being aggrieved by the above said order of conviction of the learned JMFC, Ghogha, the accused preferred Criminal Appeal No. 28 of 1988 before the court of Sessions Judge, Bhavnagar. As said above, the learned Addl. Sessions Judge, Bhavnagar, by his order dated 21st November, 1992 dismissed the Appeal and confirmed the order of conviction of present petitioner and hence this Revision Application.

4. Learned Advocate Mr. A.D. Shah for the present petitioner while learned APP Mr. B.Y. Mankad for the State were heard.

5. Learned Advocate Mr. A.D. Shah vehemently urged that the learned Magistrate and the Appellate Judge erred in appreciation of evidence, which if put to the touchstone of probability, would certainly result in acquittal of the present petitioner. It is stated that Vasta Parsottam, eye witness, named in the FIR has not been examined by the prosecution in the case. He was cited as an important witness in the charge sheet and he was the only independent eye witness according to the prosecution case. This fact has not been considered by both the Courts below properly. It was further urged that Laghara Bachubhai, Exh. 71, PW4, who is the son of the complainant was examined and posed himself as an eye witness. While as per the prosecution case, he was not

an eye witness nor his name was shown as such in the FIR by the complainant and therefore this infirmity in the prosecution case has not been properly considered or appreciated by both the Courts below. This fact is damaging to the prosecution case. It was further urged that the story attributed to the prosecution case is strange that accused No.3, lady, aged about 40, would take the complaint in her grips in the prescence of her husband and her son. This story itself is improbable and, therefore, the suggestions were put to the witnesses of the prosecution that in fact the complainant tried to molest accused No.3 and on seeing this, the accused No. 1 and 2 on sudden provocation tried to overtake the complainant who was running away and fell in a pit and received injuries. It was urged that these suggestions were not taken into consideration because in the statement of the accused under Sections 313 this fact was not substantiated by the accused. This approach therefore of both the Courts below is erroneous that at least the genesis and the previous circumstances of the incident ought to have been taken into account by both the Courts below, which is not taken. There is contradictions amongst the depositions of the complainant as well as Laghara Bachubhai who posed himself as an eye witness. It was urged that therefore both the Courts below failed to appreciate the origin of the story which was not probable. In the circumstances both the Courts below failed to appreciate the defence of the accused which was placed in the shape of suggestions to the witnesses of the prosecution. It was urged that the Revision is required to be allowed and the present petitioner is required to be acquitted for the charges punishable under Sections 326 read with Section 34 of the Indian Penal Code.

6. Learned APP Mr. B.Y. Mankad has supported the decisions of both the Courts below.

7. Having gone through the entire record of the case and having regard to the contentions raised on behalf of the accused - applicant herein, it clearly appears that this is a case wherein the evidence is required to be appreciated carefully. Both the Courts below have completely appreciated the evidence very carefully and have come to the conclusion. True it is that the independent witness Vasta Parsottam, who is named in the FIR, has not been examined though he is cited as an witness in the charge sheet, but that fact itself in the circumstances is not fatal to the prosecution case. In appreciation of the evidence, the evidence of the injured witness - complainant must be carefully examined and

scrutinised. If it is found that the evidence of injured - complainant is not upto the mark, the Court should seek corroboration from other evidence of the prosecution, and in this case, the evidence of the complainant is unblemished, trustworthy and credible. The complainant supports the complaint which he has filed. On careful scrutiny of the evidence of the complainant, it clearly appears that the incident occurred in the manner as narrated by the complainant in his deposition which is at Exh. 35, PW1. Now, therefore, the question is whether this creditworthy evidence should not be taken into consideration only because the independent eye witness is not examined. It is established rule of evidence that in all cases injured witness requires no independent corroboration. In this case, if the reliance can be placed upon the evidence of the complainant, there is no need for searching any corroboration from the other evidence. Not only that the evidence of the complainant Bachubhai Bhikabhai is well corroborated by the medical evidence i.e. by the medical certificate of injuries Exh. 83 and by the evidence of Dr. Mahendrakumar Jivabhai, Exh. 81 PW7. From these, the evidence of the complainant, Doctor and the medical certificate, it is clearly established that the incident occurred as narrated by the complainant and in these circumstances both the Courts below have rightly observed that merely because the eye witness, named in the First Information Report, has not been examined or merely because one of the witnesses as per the prosecution case is not eye witness, posed himself as an eye witness, would not by itself a ground to throw the case of the prosecution overboard which is other wise creditworthy by the evidence of the complainant and as corroborated by the Doctor. In these circumstances, the contention that because the eye witness was not examined, the prosecution case should not be believed, cannot be accepted. Like wise, when by deposition of the complainant it is established that the incident occurred in certain manner than the defence placed by the accused in the shape of suggestions in the cross-examination to the witnesses that the accused No.3 was molested by the complainant and the incident occurred, cannot be relied upon and both the Courts below have rightly not placed any reliance on such defence while the same is not substantiated by the statements of the accused under Section 313 of the Criminal Procedure Code. The evidence appears to be natural and creditworthy to convict the accused for the offences punishable under Sections 326 read with 34 of the Indian Penal Code and on this score, no interference is required.

8. But, however, the incident is occurred in 1980 i.e. before 20 years, the petitioner at present must be aged about 52 years. The other two accused are given the benefit of Probation. The report of the Probation Officer was in favour of the present petitioner also, but the learned Magistrate did not consider it fit to give the benefit of the provisions of the Probation of Offenders Act to the present accused because of the injuries sustained by the complainant. In these circumstances, it clearly appears that so far as the quantum of the punishment is concerned, the interference of this Court is required, and to that extent the Revision is required to be allowed.

9. In this view of the matter, while maintaining the order of conviction awarded by both the Courts below to the present petitioner, the quantum of punishment is reduced to the extent that instead of 3 years rigorous imprisonment, the present petitioner is sentenced to 8 days simple imprisonment and instead of the fine of Rs. 2,500/- the petitioner is sentenced to pay the fine of Rs. 3,000/-. Out of which, Rs. 2,500/- as ordered by the Judicial Magistrate, First Class, Bhavnagar, will be paid to the complainant as compensation. Therefore, the order of sentenced as awarded by the learned Judicial Magistrate, First Class and confirmed by the Appellate Judge is modified to the above extent. Revision Application upto that extent is allowed and rule is made absolute to that extent. Bail bonds of the petitioner shall stand cancelled.

(J.R. Vora, J.)
p.n.nair

After pronouncement of judgment, learned Advocate Mr. A.D. Shah submits that four weeks time be granted for surrendering the petitioner to the court. Request is granted. Time is granted upto 19.11.2001 to the petitioner to surrender before the Court.

dt: 19.10.2001 (J.R. Vora, J.)